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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,332	04/14/2004	Alan L. Backus	65474-5002	5410
24574	7590	04/07/2006		
JEFFER, MANGELS, BUTLER & MARMARO, LLP 1900 AVENUE OF THE STARS, 7TH FLOOR LOS ANGELES, CA 90067				EXAMINER DEL SOLE, JOSEPH S
				ART UNIT 1722 PAPER NUMBER

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/824,332	BACKUS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Joseph S. Del Sole	1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 03 February 2006 and 06 March 2006.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 13, 14, 17, 19, 23-26, 31-35, 38, 40, 44-47 and 52-63 is/are pending in the application.
  - 4a) Of the above claim(s) 55-63 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 12, 14, 23-26, 31-35, 44-47 and 52-54 is/are rejected.
- 7) Claim(s) 17, 19, 38 and 40 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 April 2004 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 55-62 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 5/31/05.

### *Drawings*

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "152" has been used to designate both a bearing feature in Figure 7 and a blade propeller-like feature in Figure 3. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

3. The disclosure is objected to because of the following informalities: a) feature "152" is discussed in the specification as being both a washer and a blade. Appropriate correction is required.

***Terminal Disclaimer***

4. The terminal disclaimer filed on 2/3/06 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patents 6,280,092 has been reviewed and is accepted. The terminal disclaimer has been recorded.

The terminal disclaimer filed on 2/3/06 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patents 6,743,007 has been reviewed and is accepted. The terminal disclaimer has been recorded.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 13-14, 17, 19, 23-26, 31-35, 38, 40, 44-47 and 52-54 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 13 and 34 are vague and indefinite because it is unclear what structure the first and second plates take. It is unclear how merely a plate can be used in the manner claimed. The specification does not provide support for plates with the thrust bearing, but rather teaches a stainless steel washer and a plastic bearing washer.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 34-35, 45-47 and 52-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Williams (4,406,603).

Williams teaches a device for making pasta (Fig 1) having a container (Fig 6, #s 24 and 80); a housing (Fig 6, #s 22 and 58) containing a driven auger screw (Fig 6, #60); a thrust bearing having a first plate and a second plate (Fig 6, #78 and the stationary feature surrounding #s 76 and 78); the first and the second plates accepting thrust loads from the auger screw when the auger screw is driven (Fig 6 and col 6, lines 1-20), the first plate fitting on the auger screw (Fig 1 and col 6, lines 12-14 and rotating with the auger screw when the auger screw is driven and the second plate not rotating with the auger screw when the auger screw is driven (Fig 6);

the auger screw is driven by an electric motor (cols 4 and 7)

the thrust bearing is disposed within the housing (Fig 6);

the thrust bearing is located at one end of the auger screw and the opposite end of the auger screw is contacted by an extrusion die;

the housing is essentially can shaped and the thrust bearing is disposed in the bottom of the can (Fig 6);

the can shaped housing protrudes into the container (Fig 6);

the can shaped housing is capped by an extrusion die (Fig 6);

the first plate is removably attached to the auger screw by a projection extending from the first plate that is accepted in a groove in the auger screw (col 6, lines 16-20)

and both plates are in contact with farinaceous ingredients during operation of the device (the device cannot completely prevent the dispersion of ingredients beyond #76).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 13-14, 24-25 and 31-33 rejected under 35 U.S.C. 103(a) as being unpatentable over Williams (4,406,603).

Williams teaches a device for making pasta (Fig 1) having a container (Fig 6, #s 24 and 80); a housing (Fig 6, #s 22 and 58) containing a driven auger screw (Fig 6, #60); a thrust bearing having a first plate and a second plate (Fig 6, #74 and the stationary feature surrounding #76); the first and the second plates accepting thrust loads from the auger screw when the auger screw is driven (Fig 6 and col 6, lines 1-20), the first plate being fit onto the auger screw (Fig 1 and col 6, lines 7-12) and rotating with the auger screw when the auger screw is driven and the second plate not rotating with the auger screw when the auger screw is driven (Fig 6);

the first plate and the second plate are in contact with pasta making ingredients during operation of the device (Fig 1);

the auger screw is driven by an electric motor (cols 4 and 7)

the thrust bearing is disposed within the housing (Fig 6);

the housing is essentially can shaped and the thrust bearing is disposed in the bottom of the can (Fig 6);

the can shaped housing protrudes into the container (Fig 6);

the can shaped housing is capped by an extrusion die (Fig 6).

Williams does not explicitly state that the physical action for placement of the first plate onto the auger screw is snapping.

Examiner notes that the taught fitting (col 6, lines 7-12) reads on the broad recitation and teaching of snapped in the claims and application.

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have physically "snapped" as the motion used to apply the taught screw and first plate.

13. Claims 13-14, 24-26, 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams (4,406,603).

Williams teaches a device for making pasta (Fig 1) having a container (Fig 6, #s 24 and 80); a housing (Fig 6, #s 22 and 58) containing a driven auger screw (Fig 6, #60); a thrust bearing having a first plate and a second plate (Fig 6, #78 and the stationary feature surrounding #s 76 and 78); the first and the second plates accepting thrust loads from the auger screw when the auger screw is driven (Fig 6 and col 6, lines 1-20), the first plate being fit onto the auger screw (Fig 1 and col 6, lines 12-14, the Examiner notes that this fit reads on the broad recitation and teach of snapped in the claims and application) and rotating with the auger screw when the auger screw is driven and the second plate not rotating with the auger screw when the auger screw is driven (Fig 6);

the first plate and the second plate are in contact with pasta making ingredients during operation of the device (the device cannot completely prevent the dispersion of ingredients beyond #76);

the auger screw is driven by an electric motor (cols 4 and 7)

the thrust bearing is disposed within the housing (Fig 6);

the thrust bearing is located at one end of the auger screw and the opposite end of the auger screw is contacted by an extrusion die;

the housing is essentially can shaped and the thrust bearing is disposed in the bottom of the can (Fig 6);

the can shaped housing protrudes into the container (Fig 6);

the can shaped housing is capped by an extrusion die (Fig 6);

the first plate is removably attached to the auger screw by a projection extending from the first plate that is accepted in a groove in the auger screw (col 6, lines 16-20) and both plates are in contact with farinaceous ingredients during operation of the device (the device cannot completely prevent the dispersion of ingredients beyond #76).

Williams does not explicitly state that the physical action for placement of the first plate onto the auger screw is snapping.

Examiner notes that the taught fitting (col 6, lines 7-12) reads on the broad recitation and teaching of snapped in the claims and application.

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have physically "snapped" as the motion used to apply the taught screw and first plate.

14. Claims 23 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams (4,406,603).

Williams teaches the apparatus as discussed above.

Williams fails to teach materials being metal.

Williams does teach materials of a strength to withstand the operation of an auger screw and pasta extrusion.

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the materials to be metal because the mere selection of known materials, (i.e. stainless steel) on the basis of suitability for the intended use would be entirely obvious, *In re Leshin*, 125 USPQ 416.

***Allowable Subject Matter***

15. Claims 17, 19, 38 and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***References of Interest***

16. Peterson et al (6,251,147) is cited of interest to show the state of the art. Peterson et al shows that it is notoriously well known to an auger type screw with a thrust bearing, wherein the thrust bearing is composed of two plates (or bearings) one being rotatable with the screw and the other being non-rotatable. Peterson states that the rotatable plate (bearing) is welded to the screw. Prior to welding the two pieces must have been separate and must have been fit onto one another, as broadly claimed such fitting reads on snapped on.

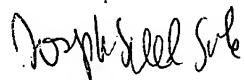
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on M-F 8:30 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph S. Del Sole

